

STATE OF MICHIGAN  
COURT OF APPEALS

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TIMOTHY J. MEAGHER,

Plaintiff-Appellant,

v

PAUL A. LAFONTAINE, SR.,

Defendant-Appellee.

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UNPUBLISHED

January 25, 2007

No. 271439

Macomb Circuit Court

LC No. 2003-004321-CK

Before: Fort Hood, P.J., and Talbot and Servitto, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order denying his motion for summary disposition and granting defendant's motion for summary disposition. We affirm.

The parties entered into an agreement in which plaintiff was to establish a limited liability corporation to purchase substantially all of the assets of Romeo Ford, an automotive dealership, and then transfer the interest to defendant. For and in consideration of this action, plaintiff was to receive \$200,000. Plaintiff entered into a stock purchase agreement and real estate agreement with the owners of Romeo Ford, the Brewers, to fulfill his obligations to defendant. The stock purchase agreement did not immediately transfer the assets to plaintiff and the limited liability corporation. Rather, the seller of Romeo Ford was to transfer the shares of company stock on the closing date. The stock purchase agreement was executed on April 16, 2002, but the closing date was set for the tenth business day following satisfaction of all conditions contained within the agreement. The closing date would not be extended beyond March 31, 2003, unless both parties agreed to an extension.

The purchase of the automotive dealership did not proceed smoothly, and two lawsuits were filed by plaintiff and his corporate entities against the owners of Romeo Ford to compel the sale. The first lawsuit resulted in a settlement agreement. Although the exact terms were not disclosed on the record, the parties agreed to dismiss the first lawsuit and to revise the terms of the original agreement. A second lawsuit was filed wherein plaintiff and the corporate entities alleged that the owners of Romeo Ford were not complying with the terms of the revised agreement. In this lawsuit, the parties agreed to allow an accountant to make calculations regarding the business and, if any party did not agree with the calculations, a complete rescission of the agreement would occur. Apparently, the parties did not agree with the calculations and the agreement was rescinded. Although *plaintiff's counsel* stated on the record that appropriate releases would be executed if the agreement was rescinded, releases were not executed.

Plaintiff then filed this lawsuit against defendant seeking to collect the \$200,000 provided for in their contract. The trial court granted summary disposition in favor of defendant, and on appeal, a panel of this Court reversed, concluding that a closing date was not a condition precedent to payment of the \$200,000.<sup>1</sup> However, this Court also remanded the matter to the trial court to address defendant's additional claim that summary disposition in his favor was appropriate in light of the rescission of the underlying contractual agreement to purchase Romeo Ford. In so doing, we instructed the trial court to consider whether the releases executed in the underlying litigation had any impact on the present case and to determine what, if any affect, the rescission of the purchase agreement had on the agreement between plaintiff and defendant in this case.

On remand, the trial court rejected plaintiff's argument that there was no release to examine. The trial court concluded that the present controversy was so closely intertwined with the underlying settlement agreement that a review of the settlement agreement was necessary. Although there was no specific reference between the settlement and the agreement at issue in this case, the trial court concluded that the terms of the settlement were broad enough to encompass the agreement between these parties. Therefore, a rescission of the underlying stock purchase agreement resulted in a rescission of this contract, and defendant was not obligated to make payment to plaintiff. Consequently, the trial court granted defendant's motion for summary disposition. Plaintiff appeals from the trial court's holding.

Plaintiff alleges that the prior opinion by this Court compelled the trial court to grant judgment in his favor because there were no releases executed in the underlying litigation. Plaintiff's claim of error is without merit. When this Court issued its prior opinion, it did not have the benefit of the review of the lower court records in the underlying litigation. Consequently, this Court was only provided with certain pleadings from those lawsuits that the parties attached to their motions for summary disposition. The parties provided a transcript of the motion hearing during which the terms of the settlement agreement allowing for rescission were set forth on the record. At that time, *plaintiff's counsel* expressly stated that rescission would occur if the parties rejected calculations and the appropriate releases would be executed. It was reasonable to conclude that releases had been executed in light of counsel's representations on the record.

In any event, statements and comments in an opinion concerning some rule of law or debated legal proposition that is not essential to the disposition of the case constitute obiter dicta and lack the force of a binding adjudication. *McNally v Bd of Canvassers of Wayne Co*, 316 Mich 551, 558; 25 NW2d 613 (1947). Any statement about releases in the prior opinion did not constitute binding precedent, but was merely dicta. The only ruling that the trial court was bound by was the conclusion that a closing was not a condition precedent to payment of the fee at issue. The trial court was not required to enter judgment in favor of plaintiff upon learning that a formal release had not been executed. Rather, the trial court noted that examination of the

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<sup>1</sup> *Meagher v LaFontaine*, unpublished opinion per curiam of the Court of Appeals, issued January 31, 2006 (Docket No. 256138).

settlement agreement was appropriate. Plaintiff's attempt to have judgment entered in his favor on this basis is simply without foundation.

Plaintiff next alleges that the rescission of the stock purchase agreement with a third party did not rescind the fee agreement between plaintiff and defendant. We conclude that the trial court properly granted summary disposition in favor of defendant.

Appellate review of a summary disposition decision is de novo. *In re Capuzzi Estate*, 470 Mich 399, 402; 684 NW2d 677 (2004). The moving party has the initial burden to support its claim for summary disposition by affidavits, depositions, admissions, or other documentary evidence. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). The burden then shifts to the nonmoving party to demonstrate a genuine issue of disputed fact exists for trial. *Id.* To meet this burden, the nonmoving party must present documentary evidence establishing the existence of a material fact, and the motion is properly granted if this burden is not satisfied. *Id.* Affidavits, depositions, and documentary evidence offered in support of, and in opposition to, a dispositive motion, shall be considered only to the extent that the content or substance would be admissible as evidence. *Maiden v Rozwood*, 461 Mich 109, 119-121; 597 NW2d 817 (1999). Mere conclusory allegations that are devoid of detail do not satisfy the burden in opposing a motion for summary disposition. *Quinto, supra*.

An agreement to settle a pending lawsuit constitutes a contract, and the agreement is governed by the legal principles applicable to interpretation and construction of contracts. *Columbia Associates v Dep't of Treasury*, 250 Mich App 656, 668; 649 NW2d 760 (2002). The construction and interpretation of a contract presents a question of law that is reviewed de novo. *Bandit Industries, Inc v Hobbs Int'l Inc (After Remand)*, 463 Mich 504, 511; 620 NW2d 531 (2001). The goal of contract construction is to determine and enforce the parties' intent based on the plain language of the contract itself. *Old Kent Bank v Sobczak*, 243 Mich App 57, 63; 620 NW2d 663 (2000).

Following de novo review of the parties' agreement, *Bandit Industries, supra*, the underlying stock purchase agreement, and the settlement agreement, we conclude that summary disposition in defendant's favor was proper. The parties' agreement provided:

This AGREEMENT is entered into effective the 16<sup>th</sup> day of December 1999, by and between PAUL A. LAFONTAINE, SR., whose address is 245 Church Street, Romeo, Michigan 48065 and TIMOTHY J. MEAGHER, whose address is 11025 Patty Ann Lane, Romeo, Michigan 48065.

Meagher is attempting to enter into a formal asset (or stock) purchase agreement, acceptable to LaFontaine, for substantially all of the assets of the Automobile Dealership known as "Romeo Ford Inc."

Upon the execution of this agreement Meagher will establish a Limited Liability Company which will purchase the Dealership. LaFontaine will prove all necessary funding to complete the closing of the purchase in accordance with the terms and conditions as set forth in the agreement.

Prior to the closing of the purchase of the Dealership, Meagher agrees to execute in escrow such documents as are necessary to convey any and all interest, right and title in the established L.L.C. and its [sic] assets to LaFontaine. For and in consideration of the conveyance of this interest LaFontaine agrees to make payment to Meagher the sum of Two Hundred Thousand Dollars (\$ 200,000.00) in cash at the closing of the purchase of the Dealership.

Plaintiff took steps to comply with this agreement. He entered into a stock purchase and property agreement with the owners of the car dealership. However, review of the stock purchase agreement reveals that it only intended to transfer the assets of the dealership in the future following the completion of certain events. The transfer of assets never actually occurred.

An executory contract is “a contract that remains wholly unperformed or for which there remains something still to be done on both sides, often as a component of a larger transaction and sometimes memorialized by an informal letter, agreement, by a memorandum, or by oral agreement.” Black’s Law Dictionary (8<sup>th</sup> Ed), p 344; see also *In re Jackson*, 311 BR 195, 201 (WD Mich 2004). In the present case, plaintiff did not acquire the assets of Romeo Ford. Rather, he had taken steps to obtain the assets of Romeo Ford and executed an assignment to defendant. However, review of the plain language of the contract at issue reveals that plaintiff was required to establish a limited liability corporation that “will purchase the Dealership” and to “execute in escrow such documents as are necessary to convey any and all interest, right and title to the established L.L.C. and its [sic] assets to LaFontaine.” However, the limited liability corporation never acquired the dealership. Plaintiff, by virtue of executing the stock purchase agreement, obtained a right to acquire the dealership in the future provided that conditions set forth in the agreement were completed. Therefore, there were no assets contained in the corporation to transfer to LaFontaine. The assignment of an undivided interest in an executory contract that had not been performed does not result in an obligation between this plaintiff and this defendant. See *Flint & Pere Marquette Railway Co v Dewey*, 14 Mich 477, 485-486 (1866).

The trial court, in effect, reached the same conclusion. The trial court acknowledged that the settlement agreement and the parties’ agreement in the present case did not reference each other. However, the trial court essentially acknowledged that the rescission of the original underlying contract implicitly rescinded this agreement. The rescission of a contract does not merely terminate it, but it abrogates it from the very beginning. *Lash v Allstate Ins Co*, 210 Mich App 98, 102; 532 NW2d 869 (1995). It does not release the parties from further obligations with regard to the subject matter of the contract, but annuls the contract and restores the parties to their original positions before entering into the contract. *Id.* Rescission involves returning the parties to the status quo. *Id.* To warrant rescission of a contract, there must be a material breach affecting a substantial or essential part of the contract. *Omnicom v Giannetti Investment Co*, 221 Mich App 341, 348; 561 NW2d 138 (1997).

In the present case, plaintiff’s stock purchase agreement with the owners of Romeo Ford was an agreement to transfer the assets of the dealership in the future following the fulfillment of various conditions. This underlying stock purchase agreement was rescinded. Consequently, it was impossible for the limited liability corporation to purchase the dealership and then transfer the assets to defendant. That is, the underlying contract could never become executed because of its rescission. *Lash, supra*. Consequently, plaintiff could not fulfill its obligation to “purchase”

the dealership through a limited liability corporation and transfer this asset to defendant. Therefore, the trial court properly granted summary disposition in favor of defendant.

Affirmed.

/s/ Karen M. Fort Hood

/s/ Michael J. Talbot

/s/ Deborah A. Servitto